



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-162-FOR; Docket ID: OSM-2012-0022]

Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (“OSM”), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM announces receipt of a proposed amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or the “Act”). Pennsylvania’s proposed amendment consists of the addition of new definitions and revisions to Pennsylvania’s regulations on the use of the Coal Refuse Disposal Control Fund (“CRDCF”) and permit and reclamation fees.

This document provides the times and locations that the Pennsylvania program and proposed amendment are available for public inspection, the comment period during

which you may submit written comments, and the public hearing procedures if a hearing is requested.

**DATES:** We will accept written comments on these amendments until 4:00 p.m., Eastern Standard Time (“EST”) [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., EST on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by SATS No. PA-162-FOR by any of the following methods:

- **Mail/Hand Delivery:** Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, 3<sup>rd</sup> Floor, Pittsburgh, Pennsylvania 15220
- **Fax:** (412) 937-2888
- **Federal eRulemaking Portal:** The amendment has been assigned Docket ID OSM-2012-0022. If you would like to submit comments, go to <http://www.regulations.gov> and follow the instructions.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional

information on the rulemaking process, see the “Public Comment Procedures” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to review copies of the Pennsylvania regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendments by contacting OSM’s Pittsburgh Field Division Office; or you can view the full text of the program amendment available for you to read at [www.regulations.gov](http://www.regulations.gov).

In addition, you may review a copy of the amendment during regular business hours at one of the following locations:

Appalachian Regional Coordinating Center

Ben Owens, Chief

Pittsburgh Field Division

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center, 3<sup>rd</sup> Floor

Pittsburgh, Pennsylvania 15220

Telephone: (412) 937-2827, E-mail: [bowens@osmre.gov](mailto:bowens@osmre.gov)

Pennsylvania Department of Environmental Protection

Thomas Callaghan, P.G., Director

Bureau of Mining and Reclamation

Rachel Carson State Office Building

P.O. Box 8461

Harrisburg, Pennsylvania 17105-8461

Telephone: (717) 787-5015, E-mail: [tcallaghan@state.pa.us](mailto:tcallaghan@state.pa.us)

**FOR FURTHER INFORMATION CONTACT:** Ben Owens, Chief, Pittsburgh Field

Division; Telephone: (412) 937-2827. E-mail: [bowens@osmre.gov](mailto:bowens@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Pennsylvania Program**

Section 503(a) of the SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation

operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program, effective July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Pennsylvania program in the July 30, 1982, Federal Register (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

## **II. Description of the Proposed Amendment**

By letter dated December 19, 2012, (Administrative Record Number PA 895.00), Pennsylvania sent OSM a request to approve regulations related to Pennsylvania coal fees. Pennsylvania is requesting approval of regulations found at 25 Pa. Code Chapter 86, sections 1, 3, and 17.

Pennsylvania proposes the addition of two terms to the "Definitions" section of Chapter 86, of the Pennsylvania regulations dealing with general aspects of surface and underground coal mining. Pennsylvania proposes to add the terms "major permit revision" and "permit application fee" to this section. The definition of "major permit revision" is proposed to be, a revision to a coal mining permit that requires public notice. The definition of "permit application fee" is proposed to be, a nonrefundable filing fee

due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

Additionally, Pennsylvania proposes to add a subsection to section 86.3, regarding the use of the CRDCF. The new subsection (b) will, if approved, require permit application fees submitted under the Coal Refuse and Disposal Act to be used to finance the costs of review of the applications.

Further, Pennsylvania proposes to increase the permit application fees. Currently, a permit application for coal mining activities or an application for a coal preparation plant is required to be submitted with an application fee of \$250. Currently, coal refuse disposal activities require a fee of \$500 plus an additional \$10 per acre for acreage in excess of 50 acres. The proposed amendment increases the fees and creates new categories of permits with differing fees. Surface mining and coal refuse disposal permits will be assessed a fee of \$3,250; coal refuse reprocessing permits will be assessed a fee of \$1,900; coal preparation plant, anthracite underground mining, and incidental extraction permits will be assessed a fee of \$1,650; bituminous underground mining permits will be assessed a fee of \$5,750; and post-mining activity permits will be assessed a fee of \$300. Under subsection (b)(2) of the proposed amendment, a new fee is imposed for major permit revisions. This fee is either \$300 or \$1,250, dependent upon the permit type. The proposed subsection (b)(3) introduces a new fee of \$250 for permit transfers. The renewal fee assessed under the current regulation still exists at the rate of \$250. The

details of this fee are detailed in proposed subsection (b)(4). Additionally, a new fee for auger safety and bond liability revisions is proposed to be assessed in the amount of \$200 and \$100, respectively.

The proposed subsection (c) describes how the collected fees will be allocated. Permit application fees collected for surface coal mine facilities, coal refuse reprocessing facilities, and coal mining activity facilities will be deposited in the Surface Mining Conservation and Reclamation Fund. Permit application fees for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. The fees collected for coal refuse disposal facilities are to be deposited in the CRDCF. The proposed amendment also proposes adding a new component at subsection (d). This subsection requires the Department of Environmental Protection to review the adequacy of the permit application fees at least once every three years. The results of this review must be submitted in writing to the Environmental Quality Board. Specifically, the proposed report will identify and reconcile any disparity between the amount of income generated by the fees and the costs to administer these programs as well as recommend a fee increase, if necessary.

Subsection (e) of the current regulation will remain unaltered.

### **III. Public Comment Procedures**

Under the provisions of 30 C.F.R. 732.17(h), we are seeking your comments on whether Pennsylvania's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Pennsylvania's State Program.

#### Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analysis of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see DATES) or sent to an address other than those listed (see ADDRESSES) will be included in the docket for this rulemaking and considered.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment



including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., EST, on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will make a written summary of each meeting a part of the administrative record.

## **IV. Procedural Determinations**

### Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (“OMB”) under Executive Order 12866.

### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations

and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

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Thomas Shope  
Regional Director, Appalachian Region

January 29, 2013  
Date

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